

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, <i>et al.</i> ,	§	
	§	
Defendants.	§	

CONSENT MOTION FOR ENTRY OF TEMPORARY REMEDIAL ORDER

The Texas Secretary of State's office has learned that the Warren Independent School District in Tyler County, Texas, will conduct a tax ratification election on August 16, 2016, with early voting to begin on August 1, 2016. The parties continue to meet and confer about interim remedial relief for elections on November 8, 2016, and they respectfully move the Court to enter a temporary interim remedy for the Warren ISD tax ratification election. In support of this motion, the parties would show the following:

1. On July 20, 2016, the United States Court of Appeals for the Fifth Circuit affirmed this Court's finding that SB 14 results in a discriminatory effect under Section 2 of the Voting Rights Act. *Veasey v. Abbott*, No. 14-41127 (5th Cir. July 20, 2016) (en banc), slip op. 85. In its opinion, the Fifth Circuit explained:

On remand, the district court should refer to the policies underlying SB 14 in fashioning a remedy. We acknowledge that the record establishes that the vast majority of eligible voters possess SB 14 ID, and we do not disturn SB 14's effect on those voters—those who have SB 14 ID must show it to vote. The remedy must be tailored to rectify only the

discriminatory effects on those voters who do not have SB 14 ID or are unable to reasonably obtain such identification.

Id. at 83. The Fifth Circuit remanded to this Court for consideration of an appropriate remedy, with instructions to “ensure that any remedy enacted ameliorates SB 14’s discriminatory effect, while respecting the Legislature’s stated objective to safeguard the integrity of elections by requiring more secure forms of voter identification.” *Id.*

2. On July 21, 2016, consistent with the Fifth Circuit’s instructions, this Court entered an order (ECF No. 859) directing the parties to meet and confer and to submit proposed remedial plans including specific terms responsive to the Fifth Circuit’s opinion. The Court’s order set a hearing on August 17, 2016, to resolve any remaining differences between the parties regarding interim relief.

3. On July 22, 2016, the parties initiated the meet-and-confer process by conducting a conference call attended by counsel for the Plaintiffs, the United States, and the Defendants.

4. On July 23, 2016, the parties filed a Consent Motion for Entry of Temporary Remedial Order (ECF No. 861) to secure temporary interim relief limited to a special runoff election in Texas House District 120 on August 2, 2016, with early voting scheduled to begin on July 25, 2016. The Court granted the motion and ordered temporary interim relief for the special runoff election in House District 120 (ECF No. 862).

5. On July 26, 2016, the parties filed a Joint Motion to Expedite the Interim Remedy Schedule (ECF No. 868), requesting that the Court modify its previous order to require the parties to submit proposed plans for interim relief and supporting

briefing by August 2, 2016, and to submit responses to proposed plans for interim relief on August 5, 2016. In its order granting the motion (ECF No. 869), the Court ordered the parties to file a joint plan including all agreed-upon terms and respective plans regarding all disputed terms, together with supporting briefs, by August 2, 2016; to file responses on August 5, 2016; and to appear for a hearing on August 10, 2016.

6. The parties have continued to meet and confer regarding proposed interim relief, communicating daily by telephone and/or e-mail.

7. On July 27, 2016, the Secretary of State's office learned that Warren Independent School District in Tyler County, Texas, would conduct a tax ratification election on August 16, 2016, with early voting scheduled to begin on August 1, 2016.

8. The Texas Secretary of State's office represents that it would be feasible, on court order, to implement a reasonable-impediment exception for the Warren ISD tax ratification election in time for the start of early voting on August 1, 2016.

9. Under the proposed reasonable-impediment exception, if a voter appears on the official list of registered voters but does not possess an acceptable form of photo ID due to a reasonable impediment, the following steps shall be taken by the election officer to allow the voter to cast a provisional ballot:

- Provide the Reasonable Impediment Affidavit form, attached as Exhibit A, or a Spanish language translation thereof, to the voter, and ask the voter to provide one of the following forms of identification:
 - a. A valid voter registration certificate, or
 - b. A current utility bill, bank statement, government check, paycheck, or other government document that shows the name of the voter.

- If the voter does not have one of the above forms of identification, they must provide their date of birth and the last four digits of their social security number in the space provided on the Reasonable Impediment Affidavit form.
- Ask the voter to complete this form by entering their name and, where applicable, date of birth, and last four digits of their social security number, and then ask them to review the “Voter’s Affidavit of Reasonable Impediment,” indicate their impediment, and sign their name.
- Ask the voter to return the completed form to the election judge. The election judge should indicate at the bottom of the form what type of identification the voter provided. The election judge should enter the date and sign in the space provided.
- Provide the “Affidavit of Provisional Voter” envelope to the voter, and ask them to complete the voter portion on the front side of the envelope.
- Ask the voter to return the completed envelope, and on the reverse side, the election judge shall complete their portion. The election judge should mark “Other” and indicate that the voter is casting a provisional ballot due to a reasonable impediment. The election judge should enter the date and sign in the space provided.
- Staple the Reasonable Impediment Affidavit form to the “Affidavit of Provisional Voter” envelope, and the voter shall proceed to cast a provisional ballot.

6. The State represents that because early voting for the Warren ISD tax ratification election begins on Monday, August 1, 2016, it is not possible for election officials to establish a mechanism for this election whereby third-party challenges to provisional ballots cast with a Reasonable Impediment Affidavit can be processed. Given this representation, and without prejudice to the parties’ position regarding other upcoming elections, Plaintiffs and Defendants agree to this process for this election **only**.

7. Upon confirmation that the “Affidavit of Provisional Voter” envelope is complete and that the Reasonable Impediment Affidavit is attached, the provisional ballot shall be counted by the provisional balloting board unless there is conclusive evidence that the affiant is not the person in whose name the ballot is cast.

8. On court order, the Secretary of State will provide the Reasonable Impediment Affidavit form to the Warren Independent School District and Tyler County Election Department for distribution to election officials.

9. In agreeing to this motion, the parties expressly reserve all of their rights to seek or oppose future orders of relief. The parties have agreed to this order on short notice only to ensure relief for this imminent election but do not agree that this relief is appropriate for future elections. The parties do not waive any arguments or forfeit their right to appellate review. The parties will continue to meet and confer, pursuant to the Court's order, regarding an interim remedy for the elections to be held on November 8, 2016.

PRAYER FOR RELIEF

For the foregoing reasons, the parties respectfully move the Court to order that the attached Reasonable Impediment Affidavit be available at early voting locations and polling places to accommodate voters who cannot reasonably obtain an SB 14-compliant ID in time to vote in the Warren ISD tax ratification election.

Date: July 29, 2016

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2016, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
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